

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADJUSTACAM LLC,

Plaintiff,

vs.

AMAZON.COM, INC., ET AL.,

Defendants.

Case No. 6:10-CV-329-LED

JURY TRIAL DEMANDED

**DEFENDANTS NEWEGG INC., NEWEGG.COM INC., AND ROSEWILL INC.’S
NOTICE OF JOINDER IN DEFENDANTS’ MOTION FOR PARTIAL
SUMMARY JUDGMENT THAT ADJUSTACAM IS NOT ENTITLED
TO PRE-SUIT DAMAGES PURSUANT TO 35 U.S.C. 287(a)**

PLEASE TAKE NOTICE that Defendants Newegg Inc., Newegg.com Inc., and Rosewill Inc. (collectively, the “Newegg Defendants”), by and through their undersigned counsel of record, hereby respectfully join in Defendants’ Motion for Partial Summary Judgment that AdjustaCam is Not Entitled to Pre-Suit Damages Pursuant to 35 U.S.C. § 287(a) (Docket No. 473) (“Defendants’ Motion”), and incorporate Defendants’ Motion and all supporting papers herein by reference.

The Newegg Defendants bring this joinder on the grounds and for the reason that the arguments presented in Defendants’ Motion are equally applicable to the Newegg Defendants. By this joinder, the Newegg Defendants hereby adopt all arguments set forth and relief requested in Defendants’ Motion.

This joinder is made and based upon Defendants’ Motion and all supporting papers, the arguments presented herein, the pleadings comprising the record in this action, and any oral argument of counsel that may be presented at the time of hearing on this matter.

A. The Newegg Defendants Did Not Receive Any Communication From AdjustaCam Prior To Filing Of This Suit.

The Statement of Undisputed Material Facts (Defendants' Motion, pp. 4-5) also applies to the Newegg Defendants. Like the other Moving Defendants, the Newegg Defendants never received any communication from AdjustaCam, Global Media, or APAC regarding the '343 Patent or the Newegg Defendants' alleged infringement of this patent by specific products, or any communication that could be construed as actual notice under 35 U.S.C. § 287(a). *See* 35 U.S.C. § 287(a); *Sentry Protection Prods., Inc. v. Eagle Mfg. Co.*, 400 F.3d 910, 918 (Fed. Cir. 2005).

Attached as Exhibit A hereto is a true and correct copy of the Declaration of Annette Kazmerski, Esq., Litigation Counsel for Newegg, Inc., who declares that the Newegg Defendants have reviewed their legal records and could not locate any documents that reflect in any way the receipt of any notice from AdjustaCam (or one of its predecessors-in-interest) of alleged infringement of the '343 patent.

B. The Newegg Defendants Agree That Summary Judgment Should Not Be Delayed.

The Newegg Defendants also join in the Moving Defendants' arguments that summary judgment should not be delayed to permit additional discovery (Defendants' Motion, pp. 8-10), because the Newegg Defendants, like the other Moving Defendants, possess no evidence that AdjustaCam communicated a charge of infringement of the '343 Patent before commencing this litigation. *See Access Telecom, Inc. v. MCI Telecomm. Corp.*, 197 F.3d 694, 720 (5th Cir. 1999); *see also Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1285 (5th Cir. 1990) (recognizing "that a plaintiff's entitlement to discovery prior to a ruling on a motion for summary judgment is not unlimited, and may be cut off when the record shows that the requested discovery is not likely to produce the facts needed by the plaintiff to withstand a motion for summary judgment").

For each of the foregoing reasons, the Newegg Defendants respectfully join in Defendants' Motion for Partial Summary Judgment that AdjustaCam is Not Entitled to Pre-Suit Damages Pursuant to 35 U.S.C. § 287(a) (Docket No. 473), and request that this Court bar AdjustaCam from recovering any damages for the alleged infringement of the '343 Patent for the period before the filing of AdjustaCam's Complaint in this action.

DATED THIS 8th day of August, 2011.

ZARIAN MIDGLEY & JOHNSON PLLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that all counsel of record who are deemed to have consented to electronic service are being served this 8th day of August, 2011, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission, and/or first class mail on this same date.

/s/ Christopher Cuneo

Christopher Cuneo